MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2015/2016

ULV4612 -LAW OF EVIDENCE I

(All Sections / Groups)

13 October 2015

Reading Time : 2.30pm – 2.45pm (15 Minutes)
Answering Time: 2.45pm – 5.45pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Answer any **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:

   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

"DSP Musa is therefore an important witness to unfold the event, to offer explanation of the facts and to close the gap in the narrative of the prosecution's case. It is our judgment that from the facts of this case, namely the role of DSP Musa in bringing the two appellants into the picture of the entire episode, his evidence is essential to unfold the narrative upon which the prosecution's case is based on (see Seneviratne v. R [1936] 3 All ER 36 and Teoh Hoe Chye v. PP & Another Case [1987] 1 CLJ 471; [1987] CLJ (Rep) 386; [1987] 1 MLJ 220). The failure of the prosecution to call or offer for cross-examination DSP Musa, in the circumstances of the evidence as a whole, would have triggered the adverse inference under s. 114(g) of the Evidence Act 1950, against the prosecution."

(Per Tengku Maimun JCA in *Azilah Hadri & Anor v PP* [2013] 7 CLJ 577, CA)

Critically evaluate the above statement in the context of the application of the adverse inference principle under s.114(g) of the Evidence Act 1950.

(Total: 25 marks)

QUESTION 2

"*Now, even if those exhibits recovered from the lock-up were indeed illegally obtained, which we say were not, in law they remain admissible if found to be relevant to the case (s. 5 of the Evidence Act). This passage from Hanafi Mat Hassan v. PP [2006] 3 CLJ 269; [2006] 4 MLJ 134 is illustrative of this proposition, which we now adopt with approval: It is therefore clear that the court has no discretion to refuse to admit evidence on the ground that it was illegally obtained if it is relevant. This rule applies, inter alia, to cases involving illegal searches, evidence obtained by secret listening devices or by undercover police operations. It also applies to evidence obtained by unfair procedures. Thus in R v. Apicella [1986] 82 Cr App R 295, the English Court of Appeal upheld a rape conviction based upon the results of tests carried out on a specimen of body fluid obtained from the accused for medical reasons whilst he was on remand. In AG for Quebec v. Begin [1955] SCR 593, it was held that even if a blood sample was obtained from the accused without his consent it is admissible to prove intoxication. It follows that the evidence relating to the blood sample taken from the accused is admissible as it is relevant even if it was taken without his consent.....*"

(Per Arifin Zakaria CJ in *Dato' Seri Anwar Ibrahim v PP* [2015] 2 CLJ 145, FC)

Critically evaluate the above statement in the context of the admissibility of illegally and unfairly obtained evidence in Malaysia.

(Total: 25 marks)

Continued...

QUESTION 3

The Accused Gila was charged together with four others, in furtherance of their common intention with the murder of a woman (Cantik), her driver (Cekap), a lawyer (Bijak) and an accountant (Baik) (collectively referred to as 'Cantik and company') on a farm in Banting, Selangor, between 8.30pm and 9.45pm on 30 August 2010.The Prosecution alleges that Cantik and company were murdered on the farm, their bodies burnt and their ashes disposed of. Prosecution proposes to adduce the following evidence during trial:

a. evidence that Cantik had informed her daughter that she was going to meet Gila in Banting concerning certain bad cheques he had issued and that data obtained from cellphone service providers showed that the last calls made by Cantik and company came from the area where the farm was located. Advise the parties on the relevancy of this evidence;

(8 marks)

b. evidence that Gila and Cantik had dealings over certain land transactions which had caused a dispute between them. Advise the parties on the relevancy of this evidence;

(5 marks)

c. evidence that the cellphones and watches belonging to the victims were discarded into a pond located within the farm. Advise the parties on the relevancy of this evidence;

(5 marks)

d. due to the nature of the crime the Prosecution will not be able to establish the death of the victims by adducing evidence of their remains in court. Instead the Prosecution will adduce evidence that the police recovered a blood-stained cricket bat and human bones buried in the farm. Although DNA analysis could not be done on the recovered bones because of their condition, the DNA profile taken from the blood stains on the cricket bat matched those of immediate family members of Cantik and company. Advise the parties on the evidential impact arising from the Prosecution's inability to establish the death of the victims by adducing evidence of their remains in court.

(7 marks)

(Total: 25 marks)

Continued...

QUESTION 4

Cobra is an expatriate software engineer who is employed by Cyber Research Sdn. Bhd (the Company). Before he was employed, the Company's HR Director, Mr Big had sent Cobra a letter dated **1.6.2013** by facsimile transmission setting out the terms and conditions of employment (**1st Letter**). Among the terms was that the Company would pay Cobra a yearly bonus of RM50, 000 before Christmas every year. After receiving the letter Cobra had a telephone conversation with Mr Big wherein he promised Cobra that in addition to other perks stated in the **1st Letter**, the Company would pay his relocation expenses of moving to Malaysia which was expected to be in the region of US$15,000. The **1st Letter** is silent on the relocation expenses. Following the telephone conversation Mr Big instructed his secretary, Ms Kat to send a second letter dated **2.6.2013 (2nd Letter)** to confirm that the Company would pay Cobra's relocation expenses and to fax it to him immediately. The **2nd Letter** was faxed to Cobra without Mr Big's signature as he had been called away on an urgent meeting. It was only initialled by Ms Kat on behalf of Mr Big. On **3.6.2013** Mr Big sent Cobra an email to apologise for the oversight in sending the **2nd Letter** without his signature and assured Cobra that a duly signed copy will be faxed to him soon. However a duly signed copy of the **2nd Letter** was never faxed to Cobra. Mr Big has since migrated to Australia and a new HR director has replaced him in the Company. Ms Kat is no longer employed by the Company and her whereabouts are unknown.

Soon after Cobra joined the Company, it fell on hard times and refused to pay him the bonus or the relocation expenses. Cobra has now initiated civil proceedings against the Company. Advise Cobra on the admissibility of the following evidence, which will be disputed and challenged by the Company:

a. Mr Big's letter dated **1.6.2013** setting out the terms and conditions of employment **(1st Letter)**;

b. Mr Big's second letter dated **2.6.2013 (2nd Letter)** to confirm that the Company would pay Cobra's relocation expenses;

c. Mr Big's email to Cobra dated **3 .6.2013**.

(Total: 25 marks)

Continued...

QUESTION 5

Fakri (the Accused) was charged and convicted in the High Court at Melaka for trafficking in 156.02g of methamphetamine, an offence punishable under s. 39B(2) of the Dangerous Drugs Act 1952 ('the Act'). The prosecution's case was that on 3 August 2013, a police party led by Inspector Cekap raided a house where the appellant was found sleeping in one of the rooms. Inspector Cekap woke up the Accused, identified himself as a police officer and asked the Accused whether the Accused kept any illegal substance. The Accused confessed that he kept some **"Ice" (1st statement)**. When Inspector Cekap asked the Accused where it was, the Accused stated: **"It is on top of the cupboard, I can show you" (2nd statement)**. He then climbed a shoe rack and from the top of the cupboard, the Accused took a plastic packet containing crystal like substances which were later confirmed by the chemist to be methamphetamine, the subject matter of the charge. During trial the Prosecution had tendered in evidence, both the confession and the second statement.

The Defence had objected to the admission of both statements on grounds that Inspector Cekap had failed to administer the statutory caution under s. 37A(1) of the Act and that the Accused had made both statements involuntarily. According to the Defence, the Accused had been violently assaulted during the raid. The Defence also alleged that Inspector Cekap had threatened to arrest the Accused's elderly parents if he did not make a statement. The trial judge admitted both statements in evidence and convicted the Accused.

Advise the Accused on his grounds of appeal.

(Total: 25 marks)

End of Page